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July 30, 2021

By ECF

Magistrate Judge Debra C. Freeman
United States District Court
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Re: *Bookends & Beginnings LLC v. Amazon.com, Inc. et al.*, Case No. 21-cv-02584

Dear Magistrate Judge Freeman:

Defendants, Amazon.com, Inc. and the Publishers[1], respectfully submit this letter-motion to stay discovery in this case for the same reasons that Defendants are seeking a stay of discovery in *In Re Amazon.com, Inc. eBook Antitrust Litigation*, No. 1:21-cv-00351-GHW (S.D.N.Y. Jan. 14, 2021) (the ***eBooks Case***), ECF Nos. 83, 86, and 92.

Like the complaint in the *eBooks Case*, the Amended Complaint, ECF No. 65, in this case purports to allege an antitrust conspiracy among the Publishers and Amazon to increase Amazon's market power to the detriment of the Publishers' other retail booksellers. Am. Compl. ¶¶ 10, 17. While the eBooks Case involves an alleged conspiracy to use so-called most favored nation's clauses in the sale of eBooks in the United States, Plaintiff here purports to allege a conspiracy to price discriminate in the sale of print trade books in the United States. Like the eBooks Case complaint, the complaint here fails to allege either a direct conspiracy or facts from which the Court could infer the existence of a plausible conspiracy. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (plaintiff must allege "enough factual matter (taken as true) to suggest that an agreement was made"). Like the eBooks Case complaint, the Amended Complaint here alleges a nonsensical conspiracy among Publishers to damage themselves by increasing the market power of their alleged single largest customer. The Amended Complaint also alleges only parallel conduct (i.e., the existence of independent, vertical agreements between each Publisher and Amazon), which is insufficient under *Twombly* to adequately plead an antitrust claim. *Id.*

For all of these reasons, as well as others to be briefed in Defendants' Motions to Dismiss, Plaintiff is not entitled to proceed with discovery. As in the *eBooks Case*, Plaintiff seeks discovery from the Defendants before the Court has had an opportunity to consider the sufficiency of the allegations. But such threadbare and conclusory allegations of conspiracy are an insufficient basis on which to start the intrusive and expensive engine of discovery. *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009) (A plaintiff is "not entitled to discovery, cabined or otherwise," unless it first makes

[1] "Publishers" refers collectively to Defendants Hachette Book Group, Inc., HarperCollins Publishers LLC, Macmillan Publishing Group LLC, Penguin Random House LLC, and Simon & Schuster, Inc.

factual allegations sufficient to state a claim for relief.); *Trump v. Vance*, 480 F. Supp. 3d 460, 502 (S.D.N.Y. 2020) ("Moreover, generally speaking, discovery is not an entitlement in federal civil actions, and the pleading standards under Rule 12(b)(6) are not a formality devoid of substance. The Court should not 'relax the pleading requirements' of Rule 8 and allow even 'minimally intrusive discovery' where the SAC has failed to state a claim."), *aff'd*, 977 F.3d 198 (2d Cir. 2020). Plaintiff has already amended its complaint once, and still failed to meet its burden; it should not be entitled to any additional discovery until the Court has determined whether the amended complaint has a sufficient basis to proceed.[2]

Respectfully submitted,

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[2] Contrary to Plaintiff's allegation in the Amended Complaint, ECF No. 65, ¶¶ 47, 113, Defendants are not aware of a single regulatory investigation by government authorities focused on print books.

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cc: All Counsel of Record (via ECF)